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Defendant New York Marine and General  
Insurance Company

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

NEW YORK MARINE AND  
GENERAL INSURANCE COMPANY,  
a New York corporation,,

Plaintiff,

v.

AMBER HEARD, an individual,,

Defendant.

Case No. 2:22-cv-04685-GW(PDx)

Consolidated for Pre-Trial Purposes  
with 2:21-cv-5832-GW (PDx)

**PLAINTIFF NEW YORK  
MARINE'S NOTICE OF MOTION  
AND MOTION FOR JUDGMENT  
ON THE PLEADINGS**

Date: July 27, 2023  
Time: 8:30 a.m.  
Dept.: 9D

Hon. George H. Wu

AMBER HEARD, an individual,

Counter-Claimant

v.

NEW YORK MARINE AND  
GENERAL INSURANCE COMPANY,  
a New York Corporation,

Counter-Defendant

1 **TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on July 27, 2023 at 8:30 a.m., or as soon  
 3 thereafter as this matter may be heard in Courtroom 9D of the above-entitled Court,  
 4 located at 350 W. 1<sup>st</sup> Street, Los Angeles, California 90012, Plaintiff and  
 5 Counterclaimant New York Marine and General Insurance Company (“NY Marine”),  
 6 pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, will and hereby  
 7 does move the Court for an order for judgment on the pleadings pursuant to Federal  
 8 Rule of Civil Procedure 12(c).

9 This motion is made, pursuant to Federal Rule of Civil Procedure 12(c), on the  
 10 grounds that NY Marine’s first and second causes of action should be adjudicated as  
 11 a matter of law based on Heard’s representations to NY Marine and in Heard’s Motion  
 12 For Judgment On The Pleadings. Additionally, NY Marine’s third cause of action for  
 13 declaratory relief as to its duty to defend should be adjudicated in its favor as a matter  
 14 of law, as the NY Marine policy was issued and to be performed in California and the  
 15 *Depp v. Heard* action only alleged defamation by implication, thereby requiring proof  
 16 of a defamatory implication designed and intended by Heard for which coverage is  
 17 precluded by California Insurance Code §533 precluding coverage for “willful” acts.  
 18 In addition, NY Marine’s fourth cause of action for declaratory relief based on  
 19 Heard’s lack of cooperation should similarly be adjudicated in its favor as a matter of  
 20 law based on Heard’s admitted refusal to “fully accept” NY Marine’s appointment of  
 21 the Cameron McEvoy PLLC firm whom she initially retained to defend her some six  
 22 months before her September 4, 2019 tender to NY Marine.

23 This Motion is based on this Notice of Motion and Motion, the accompanying  
 24 Memorandum Of Points And Authorities In Support Of Opposition To Defendant  
 25 And Counterclaimant Amber Heard’s Motion For Judgment On The Pleadings And  
 26 Memorandum Of Points And Authorities In Support Of New York Marine’s Cross-  
 27 Motion For Judgment On The Pleadings and the Declaration of James P. Wagoner,  
 28 and all papers and pleadings of record on file in this case, and such additional authority

1 and argument as may be presented at or before the time this Motion is heard or  
2 submitted.

3 This Motion is made following the conference of counsel pursuant to L.R. 7-3,  
4 which took place on June 13, 2023.

5 Dated: June 22, 2023

McCORMICK, BARSTOW, SHEPPARD,  
WAYTE & CARRUTH LLP

6  
7  
8 By: /s/ James P. Wagoner  
James P. Wagoner  
Nicholas H. Rasmussen  
Graham A. Van Leuven  
9 Attorneys for Plaintiff and Counter-Defendant  
10 New York Marine and General Insurance  
11 Company  
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**PROOF OF SERVICE**

**New York Marine and General Insurance Company v. Amber Heard**  
**USDC Central District of California, Case No. 2:22-cv-04685-GW-PD**

**STATE OF CALIFORNIA, COUNTY OF FRESNO**

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Fresno, State of California. My business address is 7647 North Fresno Street, Fresno, CA 93720.

On June 22, 2023, I served true copies of the following document(s) described as **PLAINTIFF NEW YORK MARINE'S NOTICE OF MOTION AND MOTION FOR JUDGMENT ON THE PLEADINGS** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY ELECTRONIC SERVICE (E-MAIL):** Based on a court order or an agreement of the parties to accept electronic service, my electronic service address is heather.ward@mccormickbarstow.com, and I caused the document(s) to be sent to the persons at the electronic service address(es) listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

**BY CM/ECF NOTICE OF ELECTRONIC FILING:** I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on June 22, 2023, at Fresno, California.

/s/ Heather Ward  
Heather Ward

**SERVICE LIST**

***New York Marine and General Insurance Company v. Amber Heard***  
**USDC Central District of California, Case No. 2:22-cv-04685-GW-PD**

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*Courtesy Copy – Via Email*

*Attorneys for Plaintiff and  
Counterclaimant Travelers Commercial  
Insurance Company in USDC Central  
District Case No. 2:21-cv-05832-GW,  
consolidated for pre-trial purposes*